U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

FILE: [redacted] Office: San Antonio Date: AUG 22 2000

IN RE: Applicant: [redacted]

APPLICATION: Application for Certificate of Citizenship under § 341(a) of the Immigration and Nationality Act, 8 U.S.C. 1452(a)

IN BEHALF OF APPLICANT: [redacted]

Public Copy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

FOR THE ASSOCIATE COMMISSIONER, EXAMINATIONS

Terrance M. O'Reilly, Director
Administrative Appeals Office

[redacted]

DISCUSSION: The application was denied by the District Director, San Antonio, Texas, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The applicant was born in Mexico on November 2, 1973. The applicant's father, [redacted], was born in the United States in January 1923. The applicant's mother [redacted] was born in Mexico and never became a U.S. citizen. The applicant's parents never married each other. The applicant seeks a certificate of citizenship based upon her claim that she acquired United States citizenship through her father as a child born out of wedlock or as a child legitimated before age 18 under the law of the father's domicile under § 309 of the Immigration and Nationality Act (the Act), 8 U.S.C. 1409.

The district director determined the applicant had failed to establish that she had been legitimated by her father prior to age 18 under the law of the father's domicile as required under § 309 of the Act. The district director denied the application accordingly.

On appeal, counsel asserts that the applicant's father testified to his residency in the United States and testified that he lived with the applicant's mother for almost 16 years during which he raised and supported the applicant.

Montana v. Kennedy, 278 F.2d 68, affd. 366 U.S. 308 (1961), held that to determine whether a person acquired citizenship at birth abroad, resort must be had to the statute in effect at the time of birth. Section 301(g) of the Immigration and Nationality Act was in effect at the time of the applicant's birth. This section specifically requires the applicant to establish that prior to the applicant's birth, the citizen parent must have resided in the United States or in an outlying possession for 10 years, at least 5 of which were after age 14.

The district director also concluded that the record failed to contain satisfactory evidence that the citizen parent met the residence requirements of § 301(g) of the Act.

Section 309(a) of the Act was amended by Pub. L. 99-653 and was effective as of the date of enactment, November 14, 1986. The old § 309(a) shall apply to any individual who has attained 18 years of age as of the date of the enactment of this Act.

Section 309. CHILDREN BORN OUT OF WEDLOCK

> (a) The provisions of paragraphs (c), (d), (e), and (g) of § 301, and paragraph (2) of § 308, shall apply as of the date of birth to a person born out of wedlock if-
>
> (1) a blood relationship between the person and the father is established by clear and convincing evidence,

[redacted]

(2) the father had the nationality of the United States at the time of the person's birth,

(3) the father (unless deceased) has agreed in writing to provide financial support for the person until the person reaches the age of 18 years, and

(4) while the person is under the age of 18 years-

(A) the person is legitimated under the law of the person's residence or domicile,

(B) the father acknowledges paternity of the person in writing under oath, or

(C) the paternity of the person is established by adjudication of a competent court.

The record fails to show that the applicant's father satisfied the requirement at § 309(a)(3) of the Act by submitting an agreement in writing to provide financial support for the applicant until the applicant reaches the age of 18 years.

8 C.F.R. 341.2(c) provides that the burden of proof shall be upon the claimant, or her parent or guardian if one is acting in her behalf, to establish the claimed citizenship by a preponderance of the evidence. The applicant in this matter has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.